GUYETTE & COMPANY
LAW BRIEF PRINTERS
TULSA - OKLAHOMA

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 357

INDIAN TERRITORY ILLUMINATING OIL COMPANY, PETITIONER,

vs.

BOARD OF COUNTY COMMISSIONERS OF PAYNE COUNTY, OKLAHOMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR CERTIORARI FILED SEPTEMBER 8, 1932

CERTIORARI GRANTED DECEMBER 12, 1932

(37,054)

(37,054)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 357

INDIAN TERRITORY ILLUMINATING OIL COMPANY, PETITIONER,

vs.

BOARD OF COUNTY COMMISSIONERS OF PAYNE COUNTY, OKLAHOMA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

INDEX

	Original	Print
Proceedings in supreme court of Oklahoma	1	1
Citation and service (omitted in printing)	1	
Petition for appeal	3	1
Assignments of error and prayer for reversal	9	5
Order allowing appeal	13	8
Bond on appeal (omitted in printing)	15	
Præcipe for transcript of record	17	9
Petition in error	20	10
Case-made from district court of Payne County	23	12
Caption	23	12
Decision of Board of County Commissioners	26	13
Notice of appeal from Board of County Commissioners	27	14
Complaint before Board of County Commissioners	28	14
Affidavit of E. B. Emanhiser	36	20
Notice of appeal from Board of County Commissioners	39	23
Bond on appeal (omitted in printing)	41	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 16, 1932

	Original	Print
Motion to dismiss	47	24
Demurrer	49	24
Order overruling motion to dismiss and demurrer	51	25
Stipulation re certain oil in storage	54	26
Appellee's Exhibit "A"—Letter from county assessor and assessment lists	55	27
Stipulation and agreement as to facts	63	32
Stenographer's certificate (omitted in printing)	66	
Journal entry of judgment	68	34
Motion for new trial	72	36
Order overruling motion for new trial	74	37
Resolution authorizing appeal	77	38
Statement re transcript	79	39
Certificate of counsel	80	40
Service of case-made	81	40
Clerk's certificate (omitted in printing)	82	
Waiver of amendments to case-made	83	41
Waiver of notice, etc	84	41
Notice of settlement of case-made	85	42
Order settling case-made	86	42
Clerk's certificate (omitted in printing)	87	
Judgment	89	43
Opinion, Kornegay, J	90	44
Order staying mandate (omitted in printing)	100	
Clerk's certificate (omitted in printing)	101	
Statement of points to be relied upon and designation of parts of record to be printed	102	53
Order allowing certiorari		57

[fols. a & 1 & 2] Citation, in usual form, showing service on Ernest F. Jenkins, filed August 24, 1932, omitted in printing.

[fol. 3] [Title endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

INDIAN TERRITORY ILLUMINATING OIL COMPANY, Appellant (and Defendant in Error Below),

vs.

BOARD OF COUNTY COMMISSIONERS OF PAYNE COUNTY, STATE OF OKLAHOMA, Appellee (and Plaintiff in Error Below)

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA TO THE SUPREME COURT OF THE UNITED STATES—Filed Aug. 12, 1932

Comes now the Indian Territory Illuminating Oil Company, a corporation, defendant in error in the Supreme Court of the State of Oklahoma in the above entitled cause, which cause bears the number 20,878 in the said Supreme Court of the State of Oklahoma, and respectfully shows by this petition and the assignment of errors filed herewith, that the records, proceedings, decision and judgment of the Supreme Court of the State of Oklahoma, the same being the highest court of the State of Oklahoma in which a decision could be had in the suit, and the decision and judgment therein being final, manifest error has occurred greatly to the damage of this petitioner whereby petitioner feels aggrieved.

That as appears in the records and proceedings in this cause the petitioner herein in preparing and filing with the County Assessor of Payne County its corrected assessment list or schedule of property located in Payne County, State of Oklahoma, claimed as property exempt from taxation [fol. 4] for the year 1928, by any ad valorem taxing agency of and within the State of Oklahoma, 383,307 barrels of crude oil. The said County Assessor failed and refused to accept said claim of exemption and the said oil was added to and included in the assessment roll as property located in said Payne County subject to ad valorem taxation for

the year 1928, and a tax of $7,805.72 was levied against said crude oil for said year. As provided by the statutes of the State of Oklahoma, the petitioner paid the first half of said tax under protest and thereafter duly filed in the office of the County Clerk of Payne County, Oklahoma, its complaint wherein the petitioner prayed that the Board of County Commissioners of Payne County, State of Oklahoma, plaintiff in error in the Supreme Court of the State of Oklahoma in this cause, hereinafter referred to as plaintiff in error, issue its certificate of error cancelling, setting aside and holding for naught the tax levy on the crude oil as aforesaid and further, that it order a refund to the petitioner of so much of the said tax on said oil as had been paid. After a hearing as provided by the laws of the State of Oklahoma, the said plaintiff in error denied the said complaint of this petitioner and refused the relief therein prayed for whereupon the petitioner in accordance with the laws of the State of Oklahoma, duly appealed to the District Court of Payne County, State of Oklahoma, wherein a judgment was rendered in favor of this petitioner and wherein it was held that the said 383,307 barrels of crude oil were exempt from ad valorem taxation for the year 1928, and wherein it was ordered and adjudged that the said plaintiff in error order a refund to this petitioner in the amount of $7,805.72, that being the amount of the tax levied on said cru*ed* oil which had been at the time of the rendition of said judgment paid by the petitioner under protest. From such judgment the plaintiff in error, as further provided by the laws of the State of Oklahoma, appealed to the Supreme Court of the State of Oklahoma. By the final decision of the Supreme Court of the State of Oklahoma it was held that the said District Court of Payne County, State of Oklahoma, erred in holding the said oil exempt from ad valorem taxation and the said judgment of the said district Court was reversed with direction to the said District Court of Payne County, State [fol. 5] of Oklahoma, to revoke its order directing the said plaintiff in error to strike this property from the assessment roll, and requiring the said plaintiff in error to order a refund of the said taxes paid by this petitioner under protest.

The final decision of the Supreme Court of the State of Oklahoma was made, rendered and entered on the 17th

day of May, 1932. No petition for rehearing was filed in the said Supreme Court of the State of Oklahoma in said cause.

As also appears from the records and proceedings in this cause the claim and contention that the said crude oil was exempt from and not subject to ad valorem taxation for the year 1928, by the State of Oklahoma or any political subdivision thereof, which claim and contention was made and urged throughout the entire proceedings above described, was based upon the following facts: The said crude oil was produced by the petitioner under and pursuant to the terms of a mining lease held by the petitioner on lands located in Seminole County, State of Oklahoma, and owned by Seminole Allottees, members of the Seminole tribe of Indians, as their individual allotments and restrictions against alienation of the said land imposed by Acts of Congress had not been removed. The said lease so held by the petitioner was executed by the said allottees on their said allotments and was approved by the Secretary of the Interior pursuant to the authority of an Act of Congress approved May 27, 1908 (35 Stat. at L. 312). The said oil so produced by the petitioner had not been disposed of by the petitioners from the time of production thereof until and throughout the entire tax period in question but was owned and held in storage in its original state throughout and during the entire tax period in question by the petitioner as lessee under said lease.

As further appears from the records and proceedings in this cause there was drawn in question the validity of certain statutes of the State of Oklahoma and authority exercised thereunder on the ground of their being repugnant to the Constitution, treaties, and laws of the United States and the final decision in this cause by the Supreme [fol. 6] Court of the State of Oklahoma was in favor of their validity, the said statutes of the State of Oklahoma being Section 9574 and succeeding sections of Chapter 84 Compiled Oklahoma Statutes 1921, particularly Sections 9814, 9627 and 9614, which provide for the assessment, levy and collection by the State of Oklahoma and the political subdivisions thereof of an ad valorem tax on all property situated in the State of Oklahoma during any given tax year including crude petroleum produced from the allotment of a restricted Seminole Indian in Seminole

County, Oklahoma, by a lessee under a lease executed by such restricted allottee and duly approved by the Secretary of the Interior, and while the oil so produced by said lessee under said lease is still owned and held in storage in its original state and not disposed of by said lessee.

And as further appears in the records and proceedings in this cause there was drawn in question the validity of certain statutes of and authority exercised under the United States and the final decision of the Supreme Court of the State of Oklahoma in this cause was against their validity; and likewise in said cause as appears from the records and proceedings therein rights, privileges and immunities were specially set up and claimed by this petitioner under the Constitution of the United States, a Treaty of the United States with the Seminole Nation of Indians, and certain Statutes of the United States and the final decision of the Supreme Court of the State of Oklahoma in this cause is against and denies such rights, privileges and immunities. The said Statutes of the United States above referred to are as follows: 30 Stat. at L. 567 (the Act ratifying the agreement between the Dawes Commission and the Seminole Nation of Indians which, among other things, provided for the allotments to members of the Seminole Nation of Indians); 34 Stat. at L. 137, 144, 35 Stat. at L. 312, 45 Stat. at L. 495 (imposing restrictions upon the alienation of lands allotted to the Seminole allottees and providing for the leasing thereof with the approval of the Secretary of the Interior); and 34 Stat. at L. 267 (the Enabling Act which provides that nothing in the [fol. 7] Constitution of the State of Oklahoma shall be construed to limit or impair the rights of persons or property pertaining to the Indians of the Territory of Oklahoma and of the Indian Territory or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if the said Act had not been passed).

Petitioner further represents that the said decision and judgment of the Supreme Court of the State of Oklahoma was erroneous in *in* holding and deciding that the crude oil above described was subject to ad valorem taxation for the year 1928 by the State of Oklahoma and its political

subdivisions, and in reversing the judgment of the said District Court of Payne County, Oklahoma, and that the said decision and judgment of the Supreme Court of the State of Oklahoma is contrary to and in violation of the Treaty and Statutes of the United States hereinbefore referred to and the Constitution of the United States.

Petitioner, by reason of the errors above indicated and more fully set out in the assignment of errors filed herewith desires to avail itself of the law and practice in such cases made and provided by appeal to the Supreme Court of the United States.

Wherefore petitioner prays for the allowance of an appeal from the Supreme Court of the State of Oklahoma to the Supreme Court of the United States and for such other and further process and proceedings as will enable this petitioner to obtain a review of the case and a correction of said errors by the Supreme Court of the United States, and also prays that an order be made fixing the amount of the security which petitioner as appellant shall give and furnish upon appeal and that upon the giving of said security all further proceedings in the Supreme Court of the State of Oklahoma be suspended and stayed until the determination of said appeal by the Supreme Court of the United States; and that a transcript of the record, proceedings and papers in this case, duly authen-
[fol. 8] ticated by the Clerk of the Supreme Court of the State of Oklahoma, may be sent to the Supreme Court of the United States.

John H. Misley, Wm. P. McGinnis, Counsel for Petitioner, Indian Territory Illuminating Oil Company.

[fol. 9] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed Aug. 12, 1932

Assignment of Errors

Comes now the Indian Territory Illuminating Oil Company, the defendant in error in the Supreme Court of the

State of Oklahoma in the above cause, which cause bears the number 20,878 in the said Supreme Court of the State of Oklahoma, and the petitioner for an appeal herein, and respectfully shows that in the opinion and judgment of the Supreme Court of the State of Oklahoma in said cause, manifest errors were committed to its prejudice, which are apparent in the record and proceedings therein; that the errors committed by the Supreme Court of the State of Oklahoma in its opinion and judgment in said cause are more fully and particularly set forth as follows:

1. The Supreme Court of the State of Oklahoma erred in reversing the judgment of the District Court of Payne County, Oklahoma, and in holding and deciding that the said District Court of Payne County, Oklahoma, erred in holding that the property sought to be taxed in this cause was not subject to ad valorem taxation for the year 1928 by the State of Oklahoma or any political subdivision [fol. 10] thereof.

2. The Supreme Court of the State of Oklahoma erred in refusing to affirm the judgment of the District Court of Payne County, Oklahoma.

3. The Supreme Court of the State of Oklahoma erred in holding, deciding and determining that Section 9574 and succeeding sections of Chapter 84, Compiled Oklahoma Statutes 1921, particularly Sections 9814, 9627 and 9614, which provide for the assessment, levy and collection by the State of Oklahoma and political subdivisions thereof of an ad valorem tax on all property situated in the State of Oklahoma during any given tax year are valid when applied to crude petroleum produced from the allotment of a restricted Seminole Indian in Seminole County, Oklahoma, by a lessee under a lease executed by such restricted allottee and duly approved by the Secretary of the Interior and while the oil so produced is still owned and held in storage in its original state and not disposed of by said lessee and in rendering a decision in favor of the validity of said Statutes when applied to and construed to cover the property sought to be taxed in this cause, and in not holding under the facts in this cause that said Statutes as so applied are repugnant to the Constitution, Treaties and Laws of the United States.

4. The Supreme Court of the State of Oklahoma erred in holding, deciding, and determining that the acts of the County Assessor, the County Treasurer and the Board of County Commissioners of Payne County, State of Oklahoma, and the authority exercised by them and each of them under and the authority conferred and vested in them by the said Statutes of the State of Oklahoma mentioned specifically in assignment number 3 herein and above set forth, [fol. 11] and other statutes of the State of Oklahoma authorizing the assessment of an ad valorem tax on the property involved in this cause for the period in question are valid and in rendering a decision in favor of their validity and in not holding said Statutes and the authority so exercised by the officials aforesaid under said Statutes repugnant to the Constitution, Treaties and Laws of the United States.

5. The Supreme Court of the State of Oklahoma erred in sustaining the above mentioned Statutes of the State of Oklahoma, authorizing the assessment, levy and collection of ad valorem tax on the crude oil involved in this case, said crude oil being held in storage unsold and in its original state throughout and during the entire tax period in question by the petitioner herein, and said crude oil having been by the petitioner produced solely under an oil and gas lease upon restricted Seminole Lands under the control of Congress and the Secretary of the Interior.

6. The Supreme Court of the State of Oklahoma erred in its decision denying that the said crude oil produced by the petitioner is and was exempt from ad valorem taxation as claimed by said petitioner under the Constitution, Treaties and Laws of the United States.

Prayer for Reversal

For which errors the Indian Territory Illuminating Oil Company, defendant in error in the Supreme Court of the State of Oklahoma in this cause and petitioner for an appeal herein, prays that the judgment and decision of the Supreme Court of the State of Oklahoma in this cause be [fol. 12] reversed and that the said Supreme Court of the State of Oklahoma be directed to affirm the judgment of the District Court of Payne County, Oklahoma as rendered

in said cause and for such other and further relief as to the Court may seem just and proper and for its costs.

John H. Miley, Wm. P. McGinnis, Counsel for Petitioner, Indian Territory Illuminating Oil Company.

[fol. 13] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER ALLOWING APPEAL—Filed Aug. 12, 1932.

The Indian Territory Illuminating Oil Company, defendant in error in the Supreme Court of the State of Oklahoma in the above entitled cause, which cause bears the number 20,878 in the said Supreme Court of the State of Oklahoma, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the opinion and judgment made and entered in the said cause by the Supreme Court of the State of Oklahoma on the 17th day of May, 1932, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided;

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Oklahoma, as prayed in said petition and as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of Oklahoma shall prepare and certify a transcript of the record, proceedings, opinion and judgment in said cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in the said [fol. 14] Supreme Court of the United States within thirty days from the date hereof.

And it is further ordered that the bond on appeal be fixed in the sum of Five Hundred and no/100 ($500.00) dollars and that upon the said Indian Territory Illuminating Oil Company filing a bond in the said sum, with sufficient surety, and conditioned as required by law, the same shall operate as a supersedeas of the opinion and judgment

made and entered in the said cause, and shall suspend and stay all further proceedings in the Supreme Court of the State of Oklahoma until the final determination of said appeal by the Supreme Court of the United States.

Dated August 12, 1932.

E. F. Lester, Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:

Gus Pool, Clerk Supreme Court of Oklahoma, by Reuel Haskell, Jr., Deputy. (Seal.)

[fols. 15 & 16] Bond on appeal for $500.00, approved and filed August 12, 1932, omitted in printing.

[fol. 17] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Aug. 24, 1932

To the Clerk of the Supreme Court of Oklahoma:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause, and you shall include in such transcript of record the following:

1. Petition for appeal from the Supreme Court of the State of Oklahoma to the Supreme Court of the United States.
2. Assignment of Errors.
3. Order Allowing Appeal to the Supreme Court of the United States and fixing the Bond.
4. Citation together with Proof of Service thereof.
5. Bond, together with Approval thereof.
6. This Præcipe.
7. Petition-in-Error, together with Case-Made attached thereto.
8. Opinion of the Supreme Court of the State of Oklahoma.

9. Judgment of the Supreme Court of the State of Oklahoma showing the entry thereof.

John H. Miley, Wm. P. McGinnis, Attorneys for Indian Territory Illuminating Oil Company, Defendant in Error and Appellant.

Service of the above and foregoing Præcipe for Transcript of Record, and receipt of a copy thereof, is acknowledged this — day of August, 1932.

—— ——, Attorney for Record for Board of County Commissioners of Payne County, State of Oklahoma.

[File endorsement omitted.]

[fols. 18 & 19] STATE OF OKLAHOMA,
Oklahoma County, ss:

Harry D. Turner, being first duly sworn, deposes and states that on the 23rd day of August, 1932, he delivered a full, true and correct copy of the Præcipe for Transcript of Record hereto attached, to Ernest F. Jenkins, County Attorney of Payne County, State of Oklahoma, and attorney of record for Board of County Commissioners of Payne County, State of Oklahoma.

Harry D. Turner.

Subscribed and sworn to before me this 24th day of August, 1932. Helen Eckert, Notary Public. My commission expires April 28, 1935. (Seal.)

[fol. 20] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION IN ERROR—Filed Nov. 8, 1929

The said Board of County Commissioners of Payne County, Oklahoma, plaintiffs in error complain of said defendant in error for that the said defendant in error, Indian Territory Illuminating Oil Company, a corporation, at the May A. D. 1929 term of the District Court of Payne

County, State of Oklahoma, and on the 2nd day of August, 1929, recovered a judgment by the consideration of said court against the said Board of County Commissioners of Payne County, in a certain action then pending in said Court, wherein the said Indian Territory Illuminating Oil Company was Plaintiff and the said Board of County Commissioners of Payne County, Oklahoma, were defendants. The original casemade, duly signed, attested and filed is hereunto attached, marked Exhibit "A" and made a part of this petition in error; and the said Board of County Commissioners avers that there is error in the said record and proceedings, in this, to-wit:

[fol. 21] 1. Said Court erred in overruling the motion of plaintiffs in error for a new trial.

2. Said court erred in not rendering judgment for plaintiffs in error on the pleadings.

3. Said court erred in overruling plaintiffs in error motion to dismiss the purported and attempted appeal of defendant in error from the order and judgment of the Board of County Commissioners.

4. Said court erred in overruling the demurrer of plaintiffs in error to the purported complaint and appeal of said defendants in error.

5. Said court erred in rendering judgment for said defendants in error.

6. Said court erred in refusing and failing to render judgment for plaintiffs in error.

Wherefore plaintiffs in error pray that said judgment so rendered may be reversed, set aside and held for naught, and that a judgment may be rendered in favor of the plaintiffs in error, and against the defendant in error upon the pleadings and evidence and that the plaintiffs in error be restored to all rights that they have lost by the rendition of such judgment and for such other relief as to the Court may seem just.

Board of County Commissioners of Payne County, Oklahoma, Plaintiffs in Error, by Ernest F. Jenkins, County Attorney of Payne County, Okla., and Henry W. Hoel, Assistant County Attorney.

[fol. 22] [File endorsement omitted]

[fol. 23] IN DISTRICT COURT OF PAYNE COUNTY

No. 9597

In re Appeal of INDIAN TERRITORY ILLUMINATING OIL COMPANY from Order and Decision of the Board of County Commissioners of Payne County, Oklahoma, in the Matter of Erroneous Assessment for the Year 1928

Case-made for Appeal to the Supreme Court of the State of Oklahoma—Filed Oct. 7, 1929; filed in Supreme Court Nov. 8, 1929

Trial Judge: Hon. Charles C. Smith, District Judge

Appearances:
Fred M. Carter, C. E. Wilhite, attorneys for appellants.
Henry W. Hoel, Assistant County Attorney; Ernest F. Jenkins, County Attorney, Stillwater, Oklahoma, attorneys for appellees.

[fol. 24] And thereafter and on the 8th day of March, 1929 there is filed in the office of the Court Clerk of Payne County, Oklahoma, a transcript of the proceedings had before the Board of County Commissioners of Payne County, Oklahoma, in the matter of the erroneous assessment of the Indian Territory Illuminating Oil Company, for the year 1928, which transcript so filed as aforesaid is set out here in words, letters and figures, as follows, to-wit:

[fol. 25] (Stationery Letterhead of County Clerk Payne County, Oklahoma)

March 4, 1929.

I, County Clerk of Payne County, Oklahoma, do hereby certify that the following instruments and pleadings, to-wit:

1. Complaint,
2. Affidavit of Secretary of I. T. I. O. Co.,
3. Minutes of Meeting, Board of County Commissioners,
4. Notice of appeal,

attached hereto, are the full and complete instruments, papers and pleadings had and filed in the hearing before

the Board of County Commissioners of Payne County, Oklahoma, on March 4, 1929, at which time, said Board heard, considered and denied the complaint of said Indian Territory Illuminating Oil Company in the matter of Erroneous Assessment of said Company for the year 1928.

Dated this 4th day of March, 1929.

V. A. Doty, County Clerk, Payne County, Oklahoma. (Seal.)

[fol. 26] BEFORE BOARD OF COUNTY COMMISSIONERS, PAYNE COUNTY, OKLAHOMA

MINUTES OF MEETING

Board of County Commissioners of Payne County, Oklahoma, met in regular open session Monday, March 4th, 1929; Present, all commissioners, and the County Clerk.

The Board heard the complaint in erroneous assessment of the Indian Territory Illuminating Oil Company, heretofore filed in the office of the County Clerk of said County for hearing by said Board and being advised in the premises, and after hearing argument of counsel for said complainant and hearing the argument of the county attorney of Payne County, said Board, upon due consideration, finds: that said complaint should be denied.

It was therefore moved by Mr. J. H. Raedeker and seconded by Mr. A. C. Holbrook that said complaint should be denied. Motion carried.

It is therefore by said Board of County Commissioners ordered that the complaint of said Indian Territory Illuminating Oil Company, asking for refund of taxes paid and for certificate of error be and the same is hereby denied.

Notice of appeal to the District Court of Payne County is given by counsel for Indian Territory Illuminating Oil Company, and appeal bond in the sum of $500.00 is fixed.

Dated this 4th day of March, 1929.

Ed. T. Thatcher, Chairman; J. H. Raedeker, A. C. Holbrook, County Commissioners Payne County.

Attest:

V. A. Doty, County Clerk, Payne County. (Seal.)

[fol. 27] BEFORE BOARD OF COUNTY COMMISSIONERS OF PAYNE COUNTY

In the Matter of Complaint of the INDIAN TERRITORY ILLUMINATING OIL COMPANY on Account of Erroneous Assessment for the Year 1928

NOTICE OF APPEAL

To the Honorable Board of County Commissioners of Payne County:

Whereas, on the 4th day of March, 1929, the Board of County Commissioners of Payne County, Oklahoma, in open session, entered an order of said Board, denying to the Indian Territory Illuminating Oil Company, a certificate of error in erroneous assessment, and denying to said Company a refund of a portion of taxes, which said assessment and which said taxes were and are 1928 assessment and tax.

You are therefore hereby notified that the Indian Territory Illuminating Oil Company will and does appeal from said Order of denial of said Board of County Commissioners to the District Court of Payne County, Oklahoma.

Dated this 4th day of March, 1929.

Indian Territory Illuminating Oil Company, by R. L. Gordon, Fred M. Carter, C. E. Wilhite, Its Attorneys.

Service of the foregoing notice of appeal acknowledged this 4th day of March, 1929.

Ed. T. Thatcher, Chairman Board of County Commissioners, Payne County, Oklahoma.

[fol. 28] BEFORE BOARD OF COUNTY COMMISSIONERS OF PAYNE COUNTY, OKLAHOMA

In the Matter of the Compalint of INDIAN TERRITORY ILLUMINATING OIL COMPANY on Account of Erroneous Assessment and Levy of Taxes for the Year 1928

COMPLAINT—Filed Feb. 28, 1929

Comes now Indian Territory Illuminating Oil Company and alleges that it is a corporation organized, existing and

doing business under and by virtue of the laws of the State of New Jersey; that it has power, right and authority to conduct business in the State of Oklahoma, and that its principal place of business therein is at Bartlesville in Washington County.

Complainant alleges that on or about the 27th day of April, 1928, it caused to be filed with the County Assessor of Payne County, Oklahoma, its certain assessment list covering personal property owned by it in said county and in Eagle and Union Townships, school Districts 91, 102 and 50, in the aggregate value of $1,153,875.00, divided as follows, to-wit:

Eagle Township, School District 91	$396,159.00
Eagle Township, School district 102	314,771.00
Union township, School district 50	443,045.00

That subsequent thereto and prior to July 6, 1928, this complainant in checking said assessment list so submitted by it to the County Assessor found errors therein due to a mistake of fact and on or about July 6, 1928, filed with the County Assessor of Payne County, Oklahoma, a corrected assessment list which was intended by Complainant to be accepted by said assessor in lieu of the assessment list [fol. 29] rendered as of date of April 27, 1928; that said second assessment list carried an aggregate valuation of $1,043,975.00 divided among the townships and school districts as follows:

Eagle Township, School District 91	$335,659.00
Eagle Township, School District 102	265,271.00
Union Township, School District 50	443,045.00

That some time subsequent to July 6, 1928, the exact date being unknown to Complainant, the County Assessor of Payne County, Oklahoma, prepared his assessment list covering property alleged to belong to this Complainant and certified the same to the County Equalization Board of said County, which list of the said County Assessor carried the aggregate valuation of $1,537,694.00 apportioned as follows, to-wit:

Eagle Township, School District 91	$610,491.00
Eagle Township, School District 102	484,158.00
Union Township, School District 50	443,045.00

That from a study of the assessment lists as hereinabove set forth the distinction and difference between them appears to be as follows:

That in the list submitted April 27, 1928, this complainant rendered for assessment and showed on said list for Eagle Township, School District 91, 11—55,000 barrel steel tanks, valuation $60,500.00; 332,336 barrels of crude oil, valuation $335,659.00; and that in the list submitted July 6, 1928, the 11—55,000 barrel steel tanks were omitted for the reason that complainant alleges the same are exempt from ad valorem taxation as will more completely hereinafter appear.

That in the assessment list of April 27, 1928, in and for Eagle Township, School District 102, this complainant rendered for assessment the following items, to-wit:

[fol. 30] 9 55,000 bbl. steel tanks, valuation $459,500.00; 267,951 bbls. crude oil, valuation $265,271.00, and that in the list rendered July 6, 1928, the item of 955,000 bbl. steel tanks of valuation of $49,500.00 was omitted for reasons hereinafter set forth.

That no change was made in any of the returns applicable to Union Township, School District No. 50; that in the list submitted by the County Assessor of Payne County and certified by him to the County Equalization Board said Assessor totally and completely ignored and failed, neglected and refused to accept the assessment list rendered him by this complain-t under date of July 6, 1928, and wholly failed, neglected and refused to accept as complete the assessment list rendered by this complainant under date of April 27, 1928, but on the contrary said assessor accepted said list filed by complainant as a partial and incomplete return and added thereto the following items, to-wit:

For Eagle township, school District 91 said assessor added an item of 212,210 bbls. of crude oil of a value of $214,332.00; that in Eagle Township, School District 102 said assessor added to the list rendered by this complainant as hereinabove set out an item of 171,097 bbls. of crude oil of a valuation of $169,386.00.

Complainant states that there was included in the aggregate assessed valuation of this complainant by the county Assessor of Payne County, in the sum of $1,537,694.00 for the year 1928, the following property located in Eagle

township, School District 91 in the total valuation of $274,-832.00 as the assessed and equalized valuation of the following property, to-wit:

[fol. 31] Item	Rate	Valuation
11 55,000 bbl. Steel tanks	.10	$60,500.00
212,210 bbls. crude oil	1.01	214,332.00

That there was included in the total tax extended on the tax rolls on the property above described and in the township and school district above set forth the sum of $4,023.27 being the amount of taxes levied against and to be paid by this Complainant on account of said assessed and equalized valuation in the sum of $274,832.00.

Complainant alleges that on the 31st day of December, 1928, it proffered to the county treasurer of Payne County, Oklahoma, its payment of the first half of the 1928 taxes, which said sum included one-half of $4,023.27, and that said county treasurer now holds said payment of complainant in his possession, although not having executed formal receipt therefor or spread the same of record, as payment for the reason that the tax rolls in and for Payne County, Oklahoma had not on said date been submitted to said treasurer; that accompanying the payment hereinbefore mentioned was a protest duly executed by complainant protesting the items hereinabove set forth.

Complainant alleges that said assessment in the sum of $274,832.00 and said tax in the sum of $4,023.27 levied by reason of the aforesaid assessment is erroneous for the reasons:

(1) That said tanks are exempt from Ad valorem taxation by virtue of Chapter 39, Session Laws 1916, of the State of Oklahoma, which provides for the payment of a gross production tax on oil produced by this complainant, and complainant states that the oil produced and run into [fol. 32] these tanks was produced by it and not purchased; that the gross production tax on said oil has been duly paid to the State Auditor of the State of Oklahoma; that said tanks were necessary and indispensable to the production and development of the producing leasehold estates from which said oil was produced.

(2) That the 212,210 bbls. of crude oil shown as one of the items above set forth is and was at the time the same was rendered and certified by the county assessor, oil produced from "restricted Indian lands" from which oil the interests of the Indians had not been disassociated; that in so producing said oil and conserving the same this complainant was acting under and by virtue of leases duly approved by the Secretary of the Interior and was functioning as a United States governmental instrumentality; and that by reason thereof said production so obtained is not subject to taxation by the state of Oklahoma under decisions of the United States Supreme Court.

That there was included in the aggregate assessed valuation of $1,537,684.00 the following described property located in Eagle Township, School District 102, of the value of $218,886.00, being the assessed and equalized valuation of the following items, to-wit:

Item	Rate	Valuation
9 55,000 bbl. steel tanks	.10	$49,500.00
171,097 bbls. crude oil	.99	169,386.00

That there was included in the total taxes extended on the tax rolls on the property above described, and in the township and school district above set forth, the sum of $6,032.28 being the amount of taxes levied against and to be paid by complainant on account of said assessed and equalized valuation of $218,886.00.

[fol. 33] Complainant alleges that on the 31st day of December, 1928, it proffered to the County Treasurer of Payne County, Oklahoma, its payment of the first half of the 1928 taxes, which said sum included one-half of $6,032.28, and that said county treasurer now holds said payment of complainant in his possession, although not having executed formal receipt therefor or spread the same of record as payment, for the reason that the tax rolls in and for Payne County, Oklahoma, had not on said date been submitted to said treasurer; that accompanying the payment hereinbefore mentioned was a protest duly executed by complainant, protesting the items hereinabove set forth.

Complainant alleges that said assessment in the sum of $218,886.00 and said tax in the sum of $6,032.28 levied by

reason of the aforesaid assessment is erroneous for the reasons:

(1) That said tanks are exempt from ad valorem taxation by virtue of Chapter 39, Session Laws 1916, of the State of Oklahoma, which provides for the payment of a gross production tax on oil produced by this complainant, and complainant states that the oil produced and run into these tanks was produced by it and not purchased; that the gross production tax on said oil has been duly paid to the state auditor of the State of Oklahoma; that said tanks were necessary and indispensable to the production and development of the producing leasehold estates from which said oil was produced.

(2) That the 171,097 bbls. of crude oil shown as one of the items above set forth is and was at the time the same was rendered and certified by the County Assessor, oil produced from "restricted Indian lands" from which oil the [fol. 34] interests of the Indians had not been disassociated; that in so producing said oil and conserving the same this complainant was acting under and by virtue of leases duly approved by the Secretary of the Interior and was functioning as a United States governmental instrumentality; and that by reason thereof said production so obtained is not subject to taxation by the state of Oklahoma under decisions of the United States Supreme Court.

As a sort of résumé complainant alleges that the aggregate valuation of $1,537,694.00 as rendered and certified by the County Assessor of Payne County, Oklahoma, is erroneous and should be by this Honorable Board set aside; that the true and correct aggregate valuation of the personal property of this complainant in the townships and school districts hereinabove enumerated should be the sum of $1,043,975.00.

Complainant further states that the total amount of taxes levied against it and appearing of record as reflected by the assessor's records in the sum of $28,154.22 are erroneous and illegal and unlawfully levied and that the true and correct amount of taxes payable by this complainant to Payne County is $18,098.67; and that this complainant is entitled to have a reduction in the amount of its taxes in the sum of $10,055.55.

Wherefore complainant prays the Honorable Board of County Commissioners of Payne County, Oklahoma,

First. That said Board of County Commissioners issue its certificate of error herein cancelling, setting aside and holding for naught the tax levy appearing of record in the sum of $28,154.22 insofar as the same exceeds the sum of $18,098.67, and that this complainant be entitled to a relief in the sum of $10,055.55, alleged erroneous tax.

[fol. 35] Second. That in the event the tax rolls have been certified to the county treasurer and said county treasurer has accepted the payment of this complainant and now holds the same pursuant to the protest filed with said treasurer, in a separate fund as provided by law, then and in that event that the Board of County Commissioners order the County Treasurer of Payne County, Oklahoma, to make a refund to this complainant in the amount $5,027.78, being the first half of the 1928 tax which complainant alleges is unlawful and excessive.

Third. That in the event said county treasurer has accepted the payment of this complainant of the first half of the 1928 tax paid by it under protest then and in that event the said Board of County Commissioners issue its certificate of error cancelling, setting aside and holding for naught the tax in the further sum of $5,027.77 being the amount of the last half of the 1928 tax (due July 15, 1928) which complainant alleges is unlawful and excessive.

Indian Territory Illuminating Oil Company. R. L. Gordon, Fred M. Carter, C. E. Wilhite, Its Attorneys.

Duly sworn to by W. M. Plake. Jurat omitted in printing.

[fol. 36] AFFIDAVIT OF E. B. EMANHISER

STATE OF OKLAHOMA,
Washington County, ss:

E. B. Emanhiser, of lawful age, being first duly sworn, on oath states: that he is the duly elected, qualified and acting secretary of Indian Territory Illuminating Oil Com-

pany, a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with power and authority to do business within the State of Oklahoma; that its principal place of business is at Bartlesville, in Washington County, Oklahoma; that as such officer, he has knowledge of the facts hereinafter stated.

That on April 27, 1928, a schedule, or list of assessment, was prepared and filed with the County Assessor of Payne County, Oklahoma, purporting to be a true, accurate and correct list of all property owned by said corporation above named, subject to taxation for the year 1928 in said Payne County; that said list was prepared by J. H. Skinner, who at that time had charge of such matters for said corporation. That subsequently, an alleged error having been discovered in the schedules, or list, as submitted of date of April 27, 1928, another and different schedule, or list, was prepared and, on July 6, 1928, filed with the County Assessor [fol. 37] of Payne County to be used in lieu of the one previously submitted; that said schedule, or list, was prepared under the supervision of Mr. Frank N. Hunt, who at that date, was in charge of such matters for said corporation.

That upon the filing of said supplemental schedule, or list of assessment on July 6, 1928, the said Frank N. Hunt presumed that said supplemental list would be accepted and used in lieu of the former schedule, or list; that subseqeunt thereto, said Frank N. Hunt severed his connection with said corporation, and that for a time, no particular person was actively in charge of such tax matters; that a short time back, Mr. W. M. Plake assumed charge of the tax department of and for this corporation and is now the active head thereof.

That the first schedude, or list of assessment, filed as of April 27, 1928, was prepared and filed under a misapprehension of fact and a mistake of fact; that the subsequent schedule, or list, filed as of July 6, 1928, was a corrected list and was made in lieu of the former, to correct the errors and mistakes occurring in the first schedule, or list.

That neither this affiant, nor any member of the Indian Territory Illuminating Oil Company's officers or employees ever had any knowledge, directly or indirectly, that the County Assessor of Payne County failed and refused to accept the supplemental schedule, or assessment list, of

this corporation, and failed and refused to incorporate such supplemental schedule in his assessment roll which he certified to the Board of Equalization and to the Excise Board of Payne County, Oklahoma, until long after the Board of Equalization of Payne County had met for the purpose of equalizing values and hearing protests of assessments, so [fol. 38] that it was impossible for Indian Territory Illuminating Oil Company, or anyone acting for or in its behalf, to meet with said Board of Equalization to protest the assessment of its property as in said completed assessment roll submitted.

That said Indian Territory Illuminating Oil Company desires to protest the assessment of its personal property as the same not appears of record on the Assessment Rolls of said County, and desires to protest the taxes levied against it and appearing on the Tax Rolls of said County, and that this affidavit is made for the purpose of, and as a condition precedent to, a hearing before the Honorable Board of County Commissioners of Payne County for the purpose of hearing protest of said corporation against the Assessment Rolls and the Tax Rolls of said County.

That said Indian Territory Illuminating Oil Company has prepared and tends to said Board of County Commissioners, its formal complaint, in writing, for the purposes above stated, viz: protesting said assessment rolls and said tax rolls of said county, and that said complaint is duly verified, as required by law.

Dated this 2nd day of February, 1929.

E. B. Emanhiser.

Subscribed and sworn to before me this 2nd day of February, 1929. My commission expires Sept. 21, 1932. Bernice Howry, Notary Public. (Seal.)

[File endorsement omitted.]

[fol. 39] BEFORE BOARD OF COUNTY COMMISSIONERS OF PAYNE COUNTY, OKLAHOMA

In the Matter of Complaint of the INDIAN TERRITORY ILLUMINATING OIL COMPANY on Account of Erroneous Assessment for the year 1928

NOTICE OF APPEAL

To the Honorable Board of County Commissioners of Payne County:

Whereas, on the 4th day of March, 1929, the Board of County Commissioners of Payne County, Oklahoma, in open session, entered an order of said Board, denying to the Indian Territory Illuminating Oil Company, a certificate of error in erroneous assessment, and denying to said Company a refund of a portion of taxes, which said assessment and which said taxes were and are 1928 assessment and tax.

You are therefore hereby notified that the Indian Territory Illuminating Oil Company will and *cost* appeal from said order of denial of said Board of County Commissioners to the District Court of Payne County, Oklahoma.

Dated this 4th day of March, 1929.

Indian Territory Illuminating Oil Company, by R. L. Gordon, Fred M. Carter, C. E. Wilhite, Its Attorneys.

Service of the foregoing notice of appeal acknowledged this 4th day of March, 1929.

Ed T. Thatcher, Chairman Board of County Commissioners, Payne County, Oklahoma.

[fol. 40] Motion was made by J. H. Radedker and seconded by A. C. Holbrook that the application of I. T. I. Oil Co. for refund of erroneous assessment be denied.

Dated this 4th day of March, 1929.

Ed T. Thatcher, Chairman. J. H. Raedeker, Member. A. C. Holbrook, Member.

Notice of appeal was filed.

Commissioners set the appeal bond at $500.00.

[fols. 41-46] Bond on appeal for $500, approved and filed March 8, 1929, omitted in printing.

[fols. 47 & 48] In District Court of Payne County

No. 9597

In re Assessment of Indian Territory Illuminating Oil Co.

Motion to Dismiss—Filed May 27, 1929

Comes now Ernest F. Jenkins, County Attorney of Payne County, Oklahoma, and for and on behalf of said county of Payne, moves the court to dismiss the purported appeal of the appellant Indian Territory Illuminating Oil Co. herein, for the following reason and on the grounds.

1. That the order of the County Commissioners of Payne County, which the appellant has attempted to appeal from is not an appealable order.

2. That this court is without jurisdiction to hear and determine said appeal.

Ernest F. Jenkins, County Attorney, by Henry W. Hoel, Assistant County Attorney.

[File endorsement omitted.]

[fols. 49 & 50] In District Court of Payne County

No. 9597

In re Assessment of Indian Territory Illuminating Oil Co.

Demurrer—Filed May 27, 1929

Comes now Ernest F. Jenkins, County Attorney of Payne County, Oklahoma, and for and on behalf of said Payne County, Oklahoma, demurs to the purported complaint and appeal of said Indian Territory Illuminating

Oil Co. for the reason that said complaint shows on its face that said appellant is not entitled to the relief and judgment prayed for, and for the further reason that said complaint and purported appeal does not state facts sufficient to enetitled appellant to any relief.

Ernest F. Jenkins, County Attorney, by Henry W. Hoel, Assistant County Attorney.

[File endorsement omitted.]

[fol. 51] IN DISTRICT COURT OF PAYNE COUNTY

No. 9597

In re Matter of the Appeal of the INDIAN TERRITORY ILLUMINATING Oil Company from Board of County Commissioners, Payne County, Oklahoma, in Erroneous Assessment for the Year 1928

ORDER OVERRULING MOTION TO DISMISS AND DEMURRER—Filed May 27, 1929

Now on this 27th day of May, 1929, this case comes on for hearing before the court on the motion of the appellees, the Board of County Commissioners of Payne County, Oklahoma, to dismiss the appeal of the appellant, Indian Territory Illuminating Oil Company, taken in this case. The appellant is present by its attorney, C. E. Wilhite, and the defendants are present by their county attorney, and Assistant County Attorney, Henry W. Hoel. Thereupon the court hears said motion to dismiss, and the argument of counsel thereon, and being fully advised in the premises, orders that said motion to dismiss, be and the same hereby is overruled, to which ruling of the court the appellees except and exceptions are by the court allowed.

Thereupon, the appellees ask leave of the court to file a demurrer to the complaint and appeal of the applicants, above named, which leave is by the court granted.

Thereupon said cause comes on for hearing upon the demurrer of the appellees to the complaint and appeal of the appellants, and all parties being present as above set

out, said demurrer is argued to the court by counsel, and the court being fully advised in the premises, orders that [fol. 52] said demurrer be and the same hereby is overruled, to which ruling of the court the appellees except and exceptions are by the court allowed.

Charles C. Smith, District Judge.

[File endorsement omitted.]

[fol. 53] And thereafter and on the 28th day of May, 1929, this case comes on for trial before the District Court of Payne County, Oklahoma, and the Honorable Judge thereof, without the intervention of a jury: The appellant is present by its attorney, C. E. Wilhite, and the appellees, are present by their attorney, Henry W. Hoel, Assistant County Attorney; and thereupon both sides announce ready for trial and the following record is made to-wit:

[fol. 54] STIPULATION RE CERTAIN OIL IN STORAGE

By Mr. Wilhite: If the court please, it is stipulated and agreed, that the crude oil specified, to-wit: 212,210 barrels stored in tanks in Eagle Township, School District number 91, and 171,097 barrels of oil, stored in tanks in Eagle Township, school District number 102, all in Payne County, Oklahoma, alleged by appellant to have been produced from restricted Indian Leasehold estates in Oklahoma, in the sense that such leasehold estates were the property of restricted Indians, was, in fact, so produced from such leasehold estates by appellant and stored in said tanks in the taxing districts and sub-divisions above set forth.

By Mr. Hoel: We offer in evidence, the County's exhibit "A".

By Mr. Wilhite: No objections.

By the Court: It may be admitted.

(Thereupon, the county or appellee's exhibit "A" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:

[fol. 55] APPELLEE'S EXHIBIT "A"

Carbon Copy

(On Letterhead of County Assessor of Payne County, Oklahoma)

June 2nd, 1928.

Indian Ter-itori Illuminating Company, Bartlesville, Oklahoma.

DEAR MR. EMENHISER: We are convinced upon investigation that oil from restricted lands is taxable when in storage and for that reason are running on the rolls 171097 barrels in District No. 102 @ .99 and 212210 barrels in No. 91 @ $1.01. This makes your total for 102 $484158 and for 91 $610491.

If you wish to be heard on this I am sure that the Commissioners will be glad to have you arrange for a date with them sometime in next month.

Very sincerely yours, —— ——, County Assessor.

(Attached is receipt for registered article No. 3998, fee paid 15 cents, class postage 1, bearing date June 2nd, 1928.)

(Also the following register return card:)

Return Receipt

Received from postmaster the registered or insured article the original number of which appears on the face of this card.

Ind. Terr. Ill. Oil Co. Duane Rainey (Signature of Addresse-'s Agent).

Date of delivery: Jun. 4, 1928.

Registered article No. 3998. (Postmark:) Bartlesville Okla., June 4, 3 P. M., 1928.

Return to L. W. Wright, Co. Assessor, Stillwater, Oklahoma.

[fol. 56] Assessment List, 1928

For Persons, Firms, Companies, etc., Engaged in Producing, Pumping, Distributing, Mining, or Storing Crude Oil, Natural Gas, Coal, Asphalt, or Other Minerals

List or schedule of property in Eagle Township, school District No. 102, Road District No. —, County of Payne, State of Oklahoma, owned, operated or under the control of Indian Territory Illuminating Oil Company, postoffice address Drawer "L", Bartlesville, Oklahoma, engaged in production of oil and natural gas on the first day of January, 1928

Location: E. ½ S. E. quarter, Sec. 35, Twp. 19, range 6.

23. Steel and iron tanks, size 55,000, 9; value, dollars	49,500
24. Oil on hand (in tanks or bbls., 267,951 value dollars)	265,271

Posted 6-30-28.

(Written in lead pencil:)

Oil from restricted L 171097	169,387
Total	314,771
(In pencil)	169,387
" "	484,158

(All other items on assessment sheet left in blank, and not copied in this exhibit. Everything not indicated in lead pencil is typewritten or printed.)

I, the undersigned affiant, do solemnly swear (or affirm) that I am the secretary of the above named person, firm, company or association; that I have read the within and foregoing statement and schedule, and am familiar with the statements therein contained; that each and all of said statements are true, and that said statement and schedule contains a full, true, complete and correct list and valuation [fol. 57] of the property of said person, firm, company or association as the same existed on January 1, 1928 according to the best of my knowledge, so help me God.

E. B. Emenhiser, Secretary.

Subscribed and sworn to in my presence this 27th day of April, 1928. My commission expires 3-15-1932. Gladys J. Heady, Notary Public. (Seal.)

Indian Territory Illuminating Oil Company

Statement of Oil in Storage, Payne County, Oklahoma, January 1, 1928

Eagle Township, School Dist. #102, E. ½ S. E. 35-19-6

Oil in storage	439,048	
Less oil in storage produced from restricted leases	171,097	$169,386 (Pencil)
Taxable Oil	267,951	

Gravity (average): 38.9°.
Value per bbl.: 99c.
Value: $265,271.49.
Less than 1 yr. old (in pencil).

Tank structures:

9 55,000 bbl. tanks—capacity	495,000 bbl.
Value @ 10¢ per bbl.	49,500.00
Total value	$314,771.49

[fol. 58] Assessment List, 1928

For Persons, Firms, Companies, etc., Engaged in Producing, Pumping, Distributing, Mining, or Storing Crude Oil, Natural Gas, Coal, Asphalt, or Other Minerals

List or schedule of property in Eagle Township, school district No. 91, Road District No. —, County of Payne, State of Oklahoma, owned, operated, or under the control of Indian Territory Illuminating Oil Company, post office address drawer "L", Bartesville, Oklahoma, engaged in production of oil and natural gas on the first day of January, 1928

Location: E. ½ N. E. ¼ Sec. 35, Twp. 19, range 6.

Items		Valuation, dollars
23. Steel and iron tanks size 55,000 No. 11		60,500
24. Oil on hand (In tanks or bbls.) 332,336		335,659
(In pencil:)		
Oil from restricted L	212,210	214,332
(In ink)		549,991
43. Total		396,159
(In pencil)		214,332
" "		610,491

(All other items on sheet in blank and are omitted.)

I, the undersigned affiant, do solemnly swear (or affirm) that I am the secretary of the above named person, firm, company, or association; that I have read the within and foregoing statement and schedule, and am familiar with the statements therein contained; that each and all of said state-[fol. 59] ments are true, and that said statement and schedule contains a full, true, complete and correct list and valuation of the property of said person, firm, company or association as the same existed on January 1, 1928, according to the best of my knowledge, so help me God.

E. B. Emenhiser, Affiant, Secretary.

Subscribed and sworn to in my presence this 27th day of April, 1928. My com. expires 3-15-1932. Gladys J. Heady, Notary Public. (Seal.)

Indian Territory Illuminating Oil Company

Statement of Oil in Storage, Payne County, Oklahoma, January 1, 1928

Eagle Township, School Dist. No. 91, E. ½ N. E. 35-19-6

Oil in storage	544,546 bbls.	
Less oil in storage produced from restricted leases	212,210	$214,332 (Pencil)
Taxable oil	332,336	
(In pencil)	544,546	

Average gravity: 39.0°.
Value per bbl. [75% of $1.64]*: $1.01.
(In pencil:) Less than 1 yr. old.
Total value: $335,659.36.
(In pencil:) 549,991.

Tank structures:

11 55,000 bbl. tanks—capacity	605,000 bbls.
Value @ 10¢ per bbl	$60,500.00
Total value	$396,159.36

[fol. 60] Assessment List, 1928

For Persons, Firms, Companies, etc., Engaged in Producing, Pumping, Distributing, Mining, or Storing Crude Oil, Natural Gas, Coal, Asphalt, or Other Minerals

List or schedule of property in Union township, School District No. 50, Road District No. —, County of Payne, State of Oklahoma, owned, operated, or under the control of Indian Territory Illuminating Oil Company, post-office address Drawer "L," Bartlesville, Oklahoma, engaged in production of oil and natural gas on the first day of January, 1928

Location: Quarter W. ½ S. E. Sec. 15, Twp. 17, Range 5.

Items	Value
24. Oil on hand (in tanks or bbls.) 452,087	443,045
(All other items in blank and omitted.) Posted 6-30-28.	
43. Total	443,045

I, the undersigned affiant, do solemnly swear (or affirm) that I am the secretary of the above named person, firm, company, or association; that I have read the within and foregoing statement of schedule, and am familiar with the statements therein contained; that each and all of said statements are true, and that said statement or schedule contains a full, true, complete and correct list and valuation

[*Stricken in copy.]

of the property of said person, firm, company or association as the same existed on January 1, 1928, according to the best of my knowledge, so help me God.

E. B. Emenhiser, Secretary, Affiant.

[fols. 61 & 62] Subscribed and sworn to in my presence this 27th day of April, 1928. My com. expires 3-15-1932. Gladys J. Heady, Notary Public. (Seal.)

Indian Territory Illuminating Oil Company

Statement of Oil in Storage, Payne County, Oklahoma, January 1, 1928

Union Township, School Dist. No. 50, W. ½ S. E. 15-17-5

Oil in storage	452,087 bbls.
Average gravity: 37.7°.	
Value per bbl. [75% of $1.30]*	.98
(In pencil:) Less than 1 yr. old.	
Value	$443,045.00

NOTE.—This oil located in 9 55,000 bbl. tanks owned by the Carter Oil Company—leased by I. T. I. O. Co.

[fol. 63] IN DISTRICT COURT OF PAYNE COUNTY

No. 9597

In re INDIAN TERRITORY ILLUMINATING OIL COMPANY

STIPULATION AND AGREEMENT AS TO FACTS—Filed July 10, 1929

Comes now the above named appellant, by its attorneys, and the County Attorney for the appellee, and further stipulate and agree:

1. That the County Assessor of Payne County, Oklahoma, on the 2nd day of June, 1928, notified the appellant

---

[*Stricken in copy.]

as follows: "We are convinced upon investigation that oil from restricted lands is taxable when in storage and for that reason are running on the rolls 171,097 barrels in District No. 102 @ .99 and 212,210 barrels in No. 91 @ $1.01. This makes your total for 102 $484,158.00 and for 91 $610,-491.00. If you wish to be heard on this I am sure that the Commissioners will be glad to have you arrange for a date with them some time in next month." It is agreed that such notice was mailed by the County Assessor by registered mail and received by appellant on June 4th, 1928.

2. That on the 28th day of February, 1929, the appellant paid to the County Treasurer under protest the sum of $14,077.11 being the first half of its taxes for 1928, covered by the above assessment list, and served the following protest notice on the county treasurer: "You are further advised that there is tendered you the sum of $14,077.11, representing and being one-half of the amount assessed and levied against the company for the personal property as assessed and returned by the county assessor in said county, [fol. 64] of which said sum so tendered you, by said company, is tendered and paid you under protest, the following amounts:

$2,011.63 relating to school Dist. #91 Eagle Twp.
$3,016.14 relating to school Dist. #102 Eagle Twp.

And said Indian Territory Illuminating Oil Company respectfully requests that you hold the tax on such personal property in the amounts shown above separate and apart from all other taxes collected by you, as required by law when payments or tenders are made under protest, and if and within said time, summons shall be served upon you in suit brought by said corporation to recover such tax, that you continue to hold the same until final determination thereof."

3. That on the 13th day of June, 1929, the appellant paid to the County Treasurer under protest the sum of $14,077.11 being the last half of its taxes for 1928, covered by the above asses-ment list, and served the following protest notice on the county treasurer, "You are further advised that there is tendered you the sum of $14,077.11, representing and being one half (last half) of the amount

assessed and levied against this company for and on account of the taxes levied by said county on the assessed valuation of said property, and that of said sum of $14,077.11, so tendered you by said Company, there is tendered you, under protest, the following amounts, to-wit:

$1,568.81 in and for Eagle Twp. S. D. No. 91.
$2,334.05 in and for Eagle Twp. S. D. No. 102.

And said Indian Territory Illuminating Oil Company respectfully requests that you hold said tax on such personal property in the amounts shown above separate and apart [fol. 65] from all other taxes collected by you, and that action will be instituted, and summons served on you within the time prescribed by law, seeking the recovery of said sums so paid to you under protest."

Indian Territory Illuminating Oil Co. Fred M. Carter, C. E. Wilhite, for Appellant. Henry W. Hoel, Asst. Co. Atty., for County Attorney and Appellee.

[File endorsement omitted.]

And this is all of the evidence that was offered and before the Court in the trial and determination of this case.

[fols. 66 & 67] Stenographer's certificate to foregoing transcript omitted in printing.

[fol. 68] In District Court of Payne County

No. 9597

In re Appeal of Indian Territory Illuminating Oil Company from Order and Decision of Board of County Commissioners of Payne County, Oklahoma, in the Matter of Erroneous Assessment for the Year 1928

Journal Entry of Judgment—Filed Aug. 2, 1929

Now, on this 2nd day of August, 1929, the above entitled cause comes on for hearing and decision, the court having taken the same under advisement when the same was tried on May 28th, 1929, at which time both parties announced a desire to present briefs on their respective contentions.

The court being well and fully advised in the premises and upon consideration of the evidence, the stipulations and briefs of the parties hereto, finds the issues in favor of the appellant and against the appellee, Board of County Commissioners of Payne County, Oklahoma. The court finds that the oil, alleged and referred to in the complaint herein, amounting to 383,307 barrels, was produced in Seminole County, Oklahoma, from land belonging to restricted Indians, and thereafter stored in Payne County, Oklahoma, in steel storage tanks at the time when all property in said county was required to be assessed for taxation purposes during the tax year of 1928. That 212,210 barrels of such oil, valued for taxation purposes at $214,326.00, was stored in Eagle Township, School District No. 91, Payne County, Oklahoma, and the remainder, 171,097 barrels valued at $169,396.00 was stored at such time in tanks in Eagle Township, School District No. 102, Payne County, Oklahoma. [fol. 69] That by reason of the fact that such oil was produced from the lands of restricted Indians, the said appellant was acting as a Government instrumentality, and therefore all of said oil was exempt from any and all forms of ad valorem taxation while stored in tanks in Payne County, Oklahoma.

The Court therefore holds that said oil was exempt property, and that the County Assessor of Payne County, Oklahoma, erroneously entered the same upon the tax rolls of said county as the taxable property of said appellant and that a certificate of error should issue by the Board of County Commissioners of said county, cancelling, setting aside and holding for naught the amount of such exempt property assessed against the appellant in school district No. 102, Eagle Township, amounting to $169,386.00, and a further certificate of error, cancelling, setting aside, and holding for naught the amount of such exempt property assessed against the appellant in school district No. 91, Eagle Township, in the sum of $214,322.00, all as prayed for in appeallant's complaint before the said Board of County Commissioners of Payne County, Oklahoma. The court finds that the said appellant has paid under protest to the County Treasurer of Payne County, Oklahoma, on the 28th day of February, 1929, the sum of $14,077.11, representing the first half of its taxes for 1928, which sum includes the taxes on the oil herein found to be exempt for taxation, and that on the 13th day of June, 1929, said ap-

pellant paid to said county treasurer under protest the further sum of $14,077.11 representing the last half of its taxes for 1928, which sum included the taxes on the oil herein found to be exempt from taxation. The court therefore finds that said appellant is entitled to a refund of [fols. 70 & 71] $7,805.72, that being the amount of the taxes it has paid as aforesaid on such exempt property.

It is therefore ordered, adjudged and decreed, by the court, that the Board of County Commissioners of Payne County, Oklahoma, appellee herein, order a refund to the appellant Indian Territory Illuminating Oil Company in the total amount of $7,805.72, that being the amount of the illegal taxes on a valuation of $169,386.00 in school District No. 102, Eagle Township, Payne County, Oklahoma, the amount of such illegal taxes in said school district being $4,668.12, and the remainder of said refund $3,137.60 being the amount of such illegal taxes on a valuation of $214,-332.00 in said school District No. 91, Eagle Township, Payne County, Oklahoma, and being the amount of taxes paid on said 383,307 barrels of oil in storage in both of said school districts in Eagle Township, Payne County, Oklahoma, which said oil was produced from lands owned by restricted Indians in Seminole County, Oklahoma, and to all of which judgment and orders of the court the appellee, board of County Commissioners of Payne County, Oklahoma, objects and excepts, which objections and exceptions are by the court allowed.

Charles C. Smith, District Judge.

OK. Ernest F. Jenkins, County Attorney.
OK. C. E. Wilhite, Attorney for Appellant.

[File endorsement omitted.]

[fol. 72] In District Court of Payne County

No. 9597

In re Appeal of Indian Territory Illuminating Oil Company from Order and Decision of Board of County Commissioners, Payne County, Oklahoma, in the Matter of the Erroneous Assessment for the Year 1928

Motion for New Trial—Filed Aug. 2, 1929

Comes now the appellee, Payne County, State of Oklahoma, and the Board of County Commissioners of said

county and moves the court to vacate and set aside the verdict and judgment rendered herein on the 2nd day of August, 1929, and to grant a new trial for the following causes which affect materially the substantial rights of the said appellee.

First. Error of the said District Court in overruling and denying appellee's motion to dismiss the pretended appeal from the order and decision of the Board of County Commissioners.

Second. Error of the said District Court in overruling and denying appellee's demurrer to said appeal.

Third. That the verdict and judgment of said court is not sustained by sufficient evidence, and is contrary to law.

Fourth. That the said verdict and judgment is not sustained by the law and the evidence.

Fifth. That the court erred in rendering judgment for appellant and in not rendering judgment for appellee.

Ernest F. Jenkins, County Attorney, by Henry W. Hoel, Assistant County Attorney.

[fol. 73] [File endorsement omitted.]

[fol. 74] IN DISTRICT COURT OF PAYNE COUNTY

No. 9597

In the Matter of the Appeal from the Board of County Commissioners, Payne County, Oklahoma, on Complaint of INDIAN TERRITORY ILLUMINATING OIL CO. on Account of Erroneous Assessment for the Year 1928

JOURNAL ENTRY OF ORDER OVERRULING MOTION FOR NEW TRIAL—Filed Aug. 2, 1929

On this 2nd day of August, 1929, there came on for hearing the motion of the defendant and appellee herein for a new trial, appellant being present by its attoreny, Mr. Murphy, and the appellee by the county attorney, Ernest F. Jenkins, and Assistant County Attorney, Henry W. Hoel. The court, having heard the arguments of counsel and be-

ing well and fully advised in the premises, and upon consideration thereof finds that the said motion for a new trial should be and the same hereby is overruled and denied.

It is therefore ordered and adjudged that the motion of the appellee for a new trial be, and the same is hereby overruled and denied; to which ruling of the court the appellee then and there excepted and gave notice in open court of its intention to appeal to the Supreme Court of the State of Oklahoma.

And the said appellee, praying an appeal to the Supreme Court, and an extension of time within which to make and serve a casemade, it is ordered that an extension of sixty days from this date be granted to said appellee and to make and serve a casemade, appellant to have ten days there- [fols. 75 & 76] after to suggest amendments, same to be settled on five days' notice in writing by either party.

Charles C. Smith, Judge of the District Court.

[File endorsement omitted.]

[fol. 77] In District Court of Payne County

Resolution Authorizing Appeal—Filed Sept. 16, 1929

Be it resolved by the Board of County Commissioners of Payne County, State of Oklahoma:

Whereas, on the 2nd day of August, 1929, in the District Court within and for Payne County, State of Oklahoma a certain judgment was rendered in cause No. 9597, entitled "In re: appeal of Indian Territory Illuminating Oil Co., from order and decision of the Board of County Commissioners of Payne County, Oklahoma, in the matter of erroneous assessment for the year 1928." And that said judgment was in favor of said Indian Territory Illuminating Oil Co., appellant, and against the Board of County Commissioners of Payne County, Oklahoma, as more fully appears by the journal entry of judgment filed in said cause.

And whereas, on the same day and date, and in the same cause, there was a further judgment rendered, and order of the court entered, overruling the motion of said Board

of County Commissioners for a new trial in said cause, as will be more fully shown from the journal entry of said order, filed in said cause.

Now, therefore, be it resolved by the Board of County Commissioners of Payne County, that it is for the best interest of said Payne County, that said cause be appealled to the Supreme Court of the State of Oklahoma, and it is the order of said Board that the County Attorney of Payne County, State of Oklahoma, appeal said cause to the Supreme Court of the State of Oklahoma, and to take any and all necessary steps for a full, final and complete hearing of said cause in the Supreme Court of the State of Oklahoma.

[fol. 78] Passed and approved this 16th day of September, 1929.

Ed T. Thatcher, Chairman of the Board of County Commissioners of Payne County, State of Oklahoma.

Attest:

V. A. Doty, County Clerk. (Seal.)

I, V. A. Doty, County Clerk in and for said county and state, do hereby certify that the foregoing resolution is a true, complete and correct copy of the original as the same appears on file and of record in my office.

Given under my hand and seal of my office this 16 day of Sept. A. D. 1929.

V. A. Doty, County Clerk. (Seal.)

Filed Payne County, Oklahoma, Sep. 16, 1929.

V. A. Doty, County Clerk.

[File endorsement omitted.]

[fol. 79] In District Court of Payne County

Statement re Transcript

The above and foregoing is a full, true, correct and complete copy and transcript of all the pleadings, motions, orders, evidence, findings, proceedings and judgments in said cause, including all the orders and rulings made, all

the exceptions allowed, all of the evidence offered or introduced, and all of the record upon which the judgment and journal entry in said cause were made.

[fol. 80] IN DISTRICT COURT OF PAYNE COUNTY

No. 9597

In the Matter of the Appeal of the INDIAN TERRITORY ILLUMINATING OIL COMPANY, etc., etc.

CERTIFICATE OF ATTORNEYS—Filed Oct. 7, 1929

We hereby certify that the foregoing casemade contains a full, true, correct and complete copy and transcript of all the proceedings in said case, including all pleadings filed and proceedings had. All the evidence offered or introduced by both parties, all orders and rulings made and exceptions allowed. And all of the records upon which the judgment and journal entry in said cause were made and entered, and that the same is a full, true, correct and complete casemade.

Witness our hands this 28 day of September, 1929.

Fred M. Carter, C. E. Wilhite, Attorneys for Appellants. Henry W. Hoel, Ernest F. Jenkins, Attorneys for Appellee.

[File endorsement omitted.]

[fol. 81] IN DISTRICT COURT OF PAYNE COUNTY

No. 9597

In the Matter of the Appeal of the INDIAN TERRITORY ILLUMINATING OIL COMPANY, etc.

SERVICE OF CASE-MADE

We, the undersigned attorneys for the appellants in the above and foregoing cause do hereby acknowledge service

of the foregoing casemade this the 28" day of September, 1929.

Fred M. Carter, C. E. Wilhite, Attorneys for Appellants.

[fol. 82] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 83] IN DISTRICT COURT OF PAYNE COUNTY

No. 9597

In the Matter of the Appeal of the INDIAN TERRITORY ILLUMINATING OIL COMPANY, etc.

WAIVER OF AMENDMENTS

We, the undersigned attorneys for the appellant- and appellee in the above entitled cause do hereby waive the suggestion of any amendments to the above and foregoing casemade.

Dated this the 28" day of September, 1929.

Fred M. Carter, C. E. Wilhite, Attorneys for Appellants. Henry W. Hoel, Ernest F. Jenkins, Attorneys for Appellee.

[fol. 84] IN DISTRICT COURT OF PAYNE COUNTY

No. 9597

In the Matter of the Appeal of the INDIAN TERRITORY ILLUMINATING OIL COMPANY, etc.

WAIVER OF NOTICE OF TIME AND PLACE OF SETTLEMENT

We, the undersigned attorneys for the appellants in this case, do hereby waive any notice of the time and place of the signing and settlement of the above and foregoing casemade.

Dated this 28" day of September, 1929.

Fred M. Carter & C. E. Wilhite, Attorneys for Appellants.

[fol. 85] IN DISTRICT COURT OF PAYNE COUNTY

No. 9597

In the Matter of the Appeal of THE INDIAN TERRITORY ILLUMINATING OIL COMPANY from Board of County Commissioners of Payne County, Oklahoma, in Erroneous Assessment for 1928

NOTICE OF SETTLEMENT OF CASE-MADE

To the Indian Territory Illuminating Oil Company, a corporation, appellant herein, and to R. L. Gordon, Fred M. Carter, and C. E. Wilhite, attorneys of record for said appellants:

You and each of you are hereby notified that on the — day of ——, 1929, at the hour of — o'clock — M. of said day in the office of the Hon. Charles C. Smith, Judge of the District Court of Payne County, Oklahoma, in the city of Stillwater, Payne County, Oklahoma, the appellee herein, the Board of County Commissioners of Payne County, Oklahoma, will present to the said Charles C. Smith, as the judge presiding at the trial of said cause, the case-made therein on appeal to the Supreme Court of the State of Oklahoma, for settlement and signing, which case-made was served on you on the — day of ——, 1929.

—— ——, Attorney for Appellant.

Service of the above and foregoing notice is hereby acknowledged to have been made on us this — day of ——, 1929.

—— ——, Attorneys for Appellant.

[fol. 86] IN DISTRICT COURT OF PAYNE COUNTY

No. 9597

In the Matter of the Appeal of THE INDIAN TERRITORY ILLUMINATING OIL COMPANY, etc.

ORDER SETTLING CASE-MADE

STATE OF OKLAHOMA,
County of Payne, ss:

I, the undersigned Judge of the District Court of the Eleventh Judicial District of Oklahoma, do hereby certify

that the foregoing was presented to me as a case-made in the action above entitled; that at the time of the presentation of said case-made to me for settlement and signing, there appeared no one for the appellees, and Henry Hoel for the appellants; that there were no suggestions of amendments made to said casemade; and I now settle and sign the same as a true and correct casemade, and direct that it be attested and filed by the clerk of said court.

Witness my hand at Stillwater, Payne County, Oklahoma this 7 day of Oct., 1929.

Charles C. Smith, District Judge.

Attest:

Dewey Dobson, Court Clerk. (Seal.)

[fols. 87 & 88] [File endorsement omitted.]

Certificate of filing omitted in printing.

[fol. 89] IN SUPREME COURT OF OKLAHOMA

20878

BOARD OF COUNTY COMMISSIONERS OF PAYNE COUNTY, STATE OF OKLAHOMA, Plaintiff in Error,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, a Corporation, Defendant in Error

JUDGMENT—May 17, 1932

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be reversed and the cause remanded.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby reversed and the cause remanded with

directions to proceed consistent with the opinion filed therein.

Opinion by Kornegay, J.

[fol. 90] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

No. 20878

In re Appeal of INDIAN TERRITORY ILLUMINATING OIL COMPANY from an Order and Decision of the Board of County Commissioners of Payne County, State of Oklahoma, in the Matter of Erroneous Assessment for the Year 1928

BOARD OF COUNTY COMMISSIONERS OF PAYNE COUNTY, STATE OF OKLAHOMA, Plaintiffs in Error,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, Defendant in Error

Syllabus

1. The oil in this case, produced in a previous year from a restricted Indian allotment, was by the oil company moved from Seminole County and placed in storage in Payne County, mixed with other oil belonging to the company, and was there located on January 1, 1928. Held, that it was subject to ad valorem taxes imposed by State law and the county assessor had a right to assess it for such taxes.

2. The lower court erred in ordering the county commissioners to issue a certificate of erroneous assessment.

Error from the District Court of Payne County, Oklahoma

Honorable Charles C. Smith, Judge

Reversed

Ernest F. Jenkins, County Attorney; Henry W. Hoel, Ass't Co. Atty., for Plaintiffs in Error.

Fred M. Carter, C. E. Wilhite, Bartlesville, for Defendant in Error.

[fol. 91] OPINION—Filed May 17, 1932

KORNEGAY, J.:

This is a suit to review the action of the district court of Payne county, requiring the board of county commissioners to strike from the list of assessed property of the Indian Territory Illuminating Oil Company, for the year 1928, some oil produced from a restricted allotment in Seminole county, the judgment being rendered on the 20th of August, 1929. The journal entry of judgment embraces three pages of the record, but the matters were simplified, largely by an agreed statement of facts, and the brief of the plaintiff in error states that the sole question in the case is whether or not oil that was produced in Seminole county by the Indian Territory Illuminating Oil Company some time prior to the 1st of January, 1928, under a lease on restricted Indian land, and which was in storage in Payne county in January, 1928, mixed with other oil, was subject to taxation as property in Payne county for that year, and if so, has the Indian Territory Illuminating Oil Company proceeded in the manner prescribed by law for the purpose of correcting the assessment of said property for taxation on that property in that county during that year?

Just when this oil was produced, the record is not explicit on. The basis of the decision was that the Indian Territory Illuminating Oil Company was acting as a governmental agency, and the order was made that the county commissioners should issue a certificate of error, taking from the tax roll in School District No. 102, Eagle Township, the amount of this oil, $169,386.00, and district No. 91 the amount of $214,322.00, the remainder of the judgment providing the relief awarded to the Indian Territory [fol. 92] Illuminating Oil Company in the way of refund of taxes, etc.

The county commissioners refused to take this off of the assessment list, and the Indian Territory Illuminating Oil Company appealed to the District court with the results above set out. It appears to us in this case that this oil being a part of the property of the Indian Territory Illuminating Oil Company, and having been moved from the wells where produced and mingled with other oil, had become a part of the mass of property of Payne county, and

was subject to ad valorem tax just as the farmers' horses, and the oil in storage that was produced from wells of other citizens of the State.

Several cases are cited from this court and other courts, and especially the Supreme Court of the United States, from which the deduction is made by the oil company that it could escape taxation during the year 1928 on this oil on account of the way it had been produced. The point is made that a full blood Indian was a ward of the United States, and therefore in developing his land for oil, the Indian Territory Illuminating Oil Company became the United States' agent, and that what it got out of it was free from taxation imposed and required by the State for its support.

We think this position ignores the rights of the State of Oklahoma and its history. Some of the citizens of the State are classed as wards of the United States, as a foundation for the deduction that the Indian Territory Illuminating Oil Company does not have to pay taxes upon its personal property, that at one time was in the ground, that had been allotted to a full blood Indian. If the Indian is a ward of the United States, when one takes the Enabling act of 1906 and reads it, it would appear that the State of Oklahoma was the child of the United States. It is necessary that it have revenue as a means of performing its functions, and to say that the United States government [fol. 93] has saved the oil in question from the taxing power of the State, would scarcely agree with the ideas of allowing the State to function and get the means to function, when required to afford to the owner of the land and the lessee the equal protection of the law, and furnish police protection for the property.

It also would scarcely be consistent with the duty of the United States towards the other Indians of the State, and towards the other taxpayers of the State. By virtue of the Enabling act, all Indians of the Five Civilized Tribes became citizens of the State, entitled to its protection and subject to its laws in large measure, and if we recognize that expenses of government are largely drawn from taxation, which is assessed against real estate, unless there is an overwhelming reason for it, we ought not to hold that property derived by citizens of the State and other states, by virtue of boring into the ground and getting oil and

bringing it to the surface and putting it into the channels of commerce, is exempt from tax.

By the terms of the Enabling act, certain restrictions were thrown around the people of the State, but when one analyses the Constitution of the United States, and finds the provisions about admitting states, and examines the case of Coyle v. Smith, 55 L. ed. 855, decided by the Supreme Court of the United States, holding invalid the limitation sought to be imposed on the people of the State of Oklahoma as to the location of its capitol, it is scarcely consistent to say that the taxing power of the state in this case does not extend to the oil that is here involved, in view of its character and location and ownership at the time of the tax assessment.

The case of Jaybird Mining Company v. Weir, 271 U. S. 609, 70 L. ed. 1113, decided by the Supreme Court of the [fol. 94] United States, is relied upon by the oil company as exempting it from taxation. When one analyses the cases that are relied upon in that case for the exemption there allowed, he will find that they all go back to the original case of Choctaw, Oklahoma & Gulf Ry. Co. v. Harrison, 235 U. S. 292, 59 L. ed. 234. The opinion says, "the lessee is an agency or instrumentality employed by the government for the development and use of the restricted land and to mine ores therefrom for the benefit of its ward," and the case of Choctaw, Okla. & Gulf Ry. Co. v. Harrison, cited above, is cited and relied on. In the Harrison case it was held that the tax complained of was an occupational tax, and the leases in that case were tribal leases to start with, and the property was still common Indian property, and the royalties were required to be paid into the treasury of the United States, and the matter was subject from time to time to regulation by government. It was there clearly held that calling it a substitute propery tax would not help the matter, and in the body of the opinion we find the following:

"Neither state courts nor legislatures, by giving a tax a particular name, or by the use of some form of words, can take away our duty to consider its real nature and effect. Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 217, 227, 52 L. ed. 1031, 1037, 28 Sup. Ct. Rep. 638.

"It is unnecessary to consider the power of the state of Oklahoma to treat coals dug from mines operated by the

appellant as other personalty, and to subject them to a uniform ad valorem tax, for it seems to us clear that the act of 1908 provided for no such imposition. Its very language imposes a 'gross revenue tax which shall be in addition to the taxes levied and collected upon an ad valorem basis.' We cannot, therefore, conclude that the gross receipts were intended merely to represent the measure of the value of property liable to a general assessment—provision is made for determining that upon a different basis. Meyer v. Wells, F. & Co., 223 U. S. 298, 301, 56 L. ed. 445, 447, 32 Sup. Ct. Rep. 218. The requirement is not on account of property owned on a given day, as is the general custom where ad valorem taxes are provided for, and as the Oklahoma laws require; but the manifest purpose is to reach all sales and secure a certain percentage thereof,—a method com- [fol. 95] monly pursued in respect of license and occupation taxes. Pullman Co. v. Knott (decided at the present term, 235 U. S. 23, ante, 105, 35 Sup. Ct. Rep. 2).

"A tax upon a merchant's manufacturer's, or miner's gross sales is not the same thing as one on his stock treated as property. Cooley, Taxn. 3d. ed. p. 1095. The former is upon his business. In effect, the Oklahoma act prescribes an occupation tax (Ohio Tax Cases, 232 U. S. 576, 592, 58 L. ed. 738, 745, 34 Sup. Ct. Rep. 372); and, accepting as true the allegations of appellant's bill, we think it cannot lawfully be subjected thereto. The decree of the court below is reversed, and the cause remanded for further proceedings in conformity with this opinion."

With that as a basis, most of the decisions since have been pronounced, and the Jaybird Mining Company case is an extension of that idea beyond its normal expanse, as it would seem from the dissenting opinions filed therein. An analysis of the C., O. & G. Ry. Co. v. Harrison, case, the foundation of the case shows that it was tribal property based on contracts made before the state. The income tax idea appears to be somewhat different from that of a property tax, as some are required to pay on property, ad valorem, and on the income derived therefrom.

On the whole, these cases seem to be based largely upon the idea of a governmental agency helping one class of Indians protect themselves as against the greed of their fellows, as distinguished from the idea of interfering with

a property tax upon that which has been derived from such property and its ownership transferred to a corporation, and has become a part of the mass of property of the citizens of the state. However, the idea of governmental agency, as applied to the oil in this case, can well be extended both forward and backward. If extended backward, when the government, with like duties owing to its Indian wards, allowed certain classes to make their own contracts, without supervision of the government, and allowed the share of the Indian land owner and the share of the product belonging to the operator, produced as result of labor in extraction, each to be subject to state tax, while the opera- [fol. 96] tors' share, working on restricted land, is exempt, equality in burden bearing no longer exists. The operator on the restricted land has the advantage. The enabling act requires, that the State Constitution shall "make no distinction in civil or political rights on account of race or color, and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence."

The Supreme Court of the United States in a subsequent case, however, of Shaw v. Gibson-Zahniser Oil Corp., 276 U. S. 575, 72 L. ed. 709, had for consideration the question again, and after the Jaybird Mining Company case was passed on. In that case the Secretary of the Interior had, with restricted funds, bought property which was conveyed to an allottee by deed carrying restrictions against alienation. It was leased out under the supervision of the Secretary, and there was production of oil. Elaborate briefs were filed in the case, and the court, in dismissing the matter, after enumerating some of the decisons and the statutory requirements, concludes the opinion as follows:

"Little need be said as to the power of the Secretary of the Interior to exempt the land and its uses from taxation. The power, if it exists, is one conferred by Congress, but neither it nor the Secretary has in terms purported to make or authorize such an exemption.

" The Act of May 27, 1908, contains no express exemption from taxation of the proceeds of restricted lands, but sec. 4 expressly subjects lands from which restrictions

have been removed to state taxation. This section was adopted in response to representations that the revenue of the state of Oklahoma was insufficient for state purpose, that large areas of lands within the state allotted to Indians were exempt from taxation as agencies of the Federal government and that Indian citizens were enjoying the benefit of local government without taxation. Report of the Senate Committee on Indian Affairs, S. Rep. No. 575, 60th Cong. 1st Sess.; Report of the House Committee on Indian Affairs, H. Rep. No. 1454, 60th Cong. 1st Sess.

"At the time of this legislation restrictions on some allotted lands had been removed by reason of the expiration of the restricted period. There were also allotments on behalf of allottees dying before allotment which in the hands of their heirs were unrestricted. See Marchie Tiger [fol. 97] v. Western Invest. Co. 221 U. S. 286, 55 L. ed. 738, 31 Sup. Ct. Rep. 578. It cannot be assumed that Congress at a time when it was withdrawing allotted lands from their former exemption in order that Indian citizens might assume the just burdens of state taxation, intended to extend a tax exemption by implication. In any cause the Secretary of the Interior has never, by rule or regulation or other action, purported to exempt such lands from state taxation. No such action is to be implied from his authorized action in restricting the power of the Indian grantee to alienate the land. See U. S. v. Ransom, 263 U. S. 691, 68 L. ed. 508, 44 Sup. Ct. Rep. 230, affirming (C. C. A. 8th) 284 Fed. 108; U. S. v. Brown (C. C. A. 8th) 8 F. (2d) 564; U. S. v. Gray (C. C. A. 8th) 284 Fed. 103; U. S. v. Mummert (C. C. A. 8th) 15 F. (2d) 926.

"Question 1. Answered No.

"Question 2. Answered No."

The first question answered in the negative was as follows:

"Had the Secretary of the Interior, on October 24, 1915, when this land was purchased, power to exempt from such state taxation land purchased under his supervision for a full blood Creek Indian with trust funds of that Indian, where the land so purchased was, at that time, subject to all state taxes?"

The second question is as follows:

"Is this tax a forbidden tax upon a Federal instrumentality?"

As applied to this case, under the agreed statement of facts, at some indefinite time the oil had been produced from a restricted allottment under a departmental lease. however, it happened to have been moved about 100 miles and stored sometime before the 1st of January, 1928, in some storage tanks along with some other oil that we do not know the origin of. Under the Constitution of the State of Oklahoma, exemptions from taxation are scarcely permitted, though there are some instances where there might be. This does not happen to be one of the enumerated cases. Our law upon the subject of tax exemption is fairly well illustrated in some of the cases that we have had, one being Wenner v. Mothersead, 129 Okl. 273, 264 P. 816, wherein the question came up as to whether or not real estate in the hands of the bank commissioner, engaged in liquidating a state bank for the benefit of the depositors under state law, was before the court for consideration, [fol. 98] and at page 275 of that report the court says:

"Besides, section 50, art. 5 of the Constitution provides:

" 'Sec. 50. The Legislature shall pass no law exempting any property within this state from taxation, except as otherwise provided in this Constitution.'

"And section 46, subdivision (U) of article 5, Id., provides:

" 'The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law * * *.

" '(U) Exempting property from taxation.'

"The rule governing the claim of exemption from taxation is emphatically and clearly stated in Tulane Educational Funds v. Board of Assessors, 35 La. Ann. 668, as follows:

" 'Exemptions from taxation are always strictly construed against the exemption, nothing can be supplied by intendment or inference.'

"The rule is stated by this court in Oklahoma City v. Shields, 22 Okl. 265, 100 P. 559, as follows:

"'Claims of exemption * * * must be * * * by express grant."

"See, also 37 Cyc. 891; 26 R. C. L. pp. 302, 313.

"The property in question not being mentioned in said section 6, art. 10, of the Constitution, and under said section 46 (U), art. 5 of the Constitution, and section 50, Id., the Legislature being without power to exempt property except as provided in the Constitution, and the recognized rule being that property is never exempted except by specific, definite provisions of law, it follows that the property involved herein is not exempt, but is subject to taxation, and that the honorable trial court erred in granting the order of injunction herein appealed from."

If the position of the oil company is here tenable, it could erect a refining plant in which nothing except oils from restricted land was used, and dispose of the gasoline so produced tax free. The same with agricultural products, produced under leases, approved by the Secretary of the Interior, though not so when produced under a lease not exceeding a year in duration.

The duty of the Indian and the white man both, to pay taxes to support the government of the State of Oklahoma, is fairly well expressed by a federal decision in the case of Central Coal & Coke Co. v. Carseloway Co., Assessor, 45 F. (2d) 744, decided by the Circuit Court of Appeals for the 10th Circuit, as follows:

"It is clear that the plaintiffs own properties of large value, situate in Oklahoma. Their ownership is secure because Oklahoma maintains a stable government. If plaintiffs need no contribute to the maintenance of that government, while enjoying the benefits thereof, some all-sufficient reason should appear."

[fols. 99 & 100] We think that reasoning applies here. There is no reason why the Indian Territory Illuminating Oil Company should not pay taxes upon this oil, as it enjoys the protection of the State government. There is neither defined exemption by positive law, or undefined exemption from rules of policy.

The case is reversed, with directions to the court below to revoke its order directing the county commissioners to strike this property from the assessment roll, and requir-

ing the board of county commissioners to order a refund of taxes paid under protest by the oil company in the aggregate of $7,805.72. The tax collecting authorities of Payne county are directed to take the necessary steps to collect the amount rebated with penalties in case the money has been returned to the oil company. The defendant in error will be taxed with the costs here and in the court below.

Riley, Hefner, Cullison, Swindall, Andrews, and McNeill, JJ., concur. Lester, C. J. and Clark, V. C. J., absent.

[fol. 101] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 102] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Sept. 14, 1932

Comes now Indian Territory Illuminating Oil Company, the appellant in the above entitled cause, and states that the points upon which it intends to rely in this Court in this case as as follows:

Point 1. That the Supreme Court of the State of Oklahoma erred in reversing the judgment of the District Court of Payne County, Oklahoma, and in holding and deciding that the said District Court of Payne County, Oklahoma, erred in holding that the property sought to be taxed in this cause was not subject to ad valorem taxation for the year 1928 by the State of Oklahoma or any political subdivision thereof.

Point 2. That the Supreme Court of the State of Oklahoma erred in refusing to affirm the judgment of the District Court of Payne County, Oklahoma.

[fol. 103] Point 3. That the Supreme Court of the State of Oklahoma erred in holding, deciding, and determining that Section 9574 and succeeding sections of Chapter 84,

Compiled Oklahoma Statutes 1921, particularly Sections 9814, 9627 and 9614, which provide for the assessment levy and collection by the State of Oklahoma and political subdivisions thereof of an ad valorem tax on all property situated in the State of Oklahoma during any given tax year are valid when applied to crude petroleum produced from the allotment of a restricted Seminole Indian in Seminole County, Oklahoma, by a lessee under a lease executed by such restricted allottee and duly approved by the Secretary of the Interior, and while the oil so produced is still owned and held in storage in its original state and not disposed of by said lessee and in rendering a decision in favor of the validity of said Statutes when applied to and constructed to cover the property sought to be taxed in this cause, and in not holding under the facts in this cause that said Statutes as so applied are repugnant to the Constitution, Treaties, and Laws of the United States.

Point 4. The Supreme Court of the State of Oklahoma erred in holding, deciding, and determining that the acts of the County Assessor, the County Treasurer and the Board of County Commissioners of Payne County, State of Oklahoma, and the authority exercised by them and each of them under the authority conferred and vested in them by the said Statures of the State of Oklahoma mentioned specifically in assignment number 3 herein and above set forth, and other statutes of the State of Oklahoma author-
[fol. 104] izing the assessment of an ad valorem tax on the property involved in this cause for the period in question are valid, and in rendering a decision in favor of their validity and in not holding said Statutes and the authority so exercised by the officials aforesaid under said Statutes repugnant to the Constitution, Treaties, and Laws of the United States.

Point 5. That the Supreme Court of the State of Oklahoma erred in sustaining the above mentioned Statutes of the State of Oklahoma, authorizing the assessment, levy and collection of ad valorem tax on the crude oil involved in this case, said crude oil being held in storage, unsold and in its original state throughout and during the entire tax period in question by the petitioner herein, and said crude oil having been by the petitioner produced solely under an

oil and gas lease upon restricted Seminole lands under the control of Congress and the Secretary of the Interior.

Point 6. That the Supreme Court of the State of Oklahoma erred in its decision denying that the said crude oil produced by the petitioner is and was exempt from ad valorem taxation as claimed by the petitioner under the Constitution, Treaties, and Laws of the United States.

And the appellant further states that only the following parts of the record, as filed in this Court, need be printed by the Clerk for the hearing of the case:

[fol. 105]

Title of paper	Record page
Citation and Service	1
Petition for Appeal to the Supreme Court of the United States	3
Assignment of Errors	9
Order Allowing Appeal	14
Bond, Showing Approval	15
Præcipe for Transcript of Record and Service	17
Petition in Error	19
Case-Made	22
Journal Entry of Judgment of Supreme Court of Oklahoma	89
Opinion of Supreme Court of Oklahoma	90
Clerk's Certificate	100

John H. Miley, Counsel for Appellant.

[fols. 106 & 107] STATE OF OKLAHOMA,
Washington County, ss:

Donald Prentice, being first duly sworn, deposes and states that on the 8th day of September, 1932, he delivered a full, true and correct copy of the Statement of Points To Be Relied Upon and Designation of the Parts of the Record to Be Printed hereto attached to Ernest F. Jenkins, County Attorney of Payne County, State of Oklahoma, and attorney of record for Board of County Commissioners of Payne County, State of Oklahoma.

Donald Prentice.

Subscribed and sworn to before me this 9th day of September, 1932. My commission expires July 5, 1934. Mabel Bellamy, Notary Public. (Seal of Mabel Bellamy, Notary Public in and for State of Oklahoma, Bartlesville, Okla.)

[fol. 108] [File endorsement omitted.]

Endorsed on cover: File No. 37,054. Oklahoma Supreme Court. Term No. 357. Indian Territory Illuminating Oil Company, appellant, vs. Board of County Commissioners of Payne County, Oklahoma. Filed September 8, 1932. File No. 37,054.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 12, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.